Yale Law Journal

Volume 27
Issue 8 *Yale Law Journal*

Article 7

1918

CURRENT DECISIONS

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CARRIERS—LIMITATION OF LIABILITY FOR NEGLIGENCE—CARMACK AMENDMENT.—Cattle were shipped by railroad under the "Uniform Live-Stock Agreement" by which, in consideration of a reduced rate, it was agreed that in the event of negligent delay or detention damages should be limited to the amount actually expended by the shipper in the purchase of food and water for the cattle while so detained. Suit was brought for loss arising from negligent delay. *Held,* that the attempted limitation of liability for negligence was invalid under the Carmack Amendment. *Boston & Maine R. R. Co. v. Piper* (1918, U. S.) 38 Sup. Ct. 354.

The case apparently arose before the adoption of the latest amendments to the Interstate Commerce Act, by which, in the case of "ordinary live-stock," all contracts of any kind attempting to limit liability are forbidden. See Act March 4, 1915, 38 U. S. St. at L. 1196, and Act Aug. 9, 1916, 39 U. S. St. at L. 441. It is chiefly interesting as showing that the court was not disposed to extend the agreed valuation doctrine of *Adams Express Co. v. Croninger* (1913) 226 U. S. 491, 33 Sup. Ct. 148, and other later decisions, which, as applied to cases of negligence, was said in *Wells Fargo & Co. v. Neiman-Marcus Co.* (1913) 227 U. S. 469, 476; 33 Sup. Ct. 267, 269, to rest on estoppel. There was clearly no basis for estoppel in the principal case.

CIVIL RIGHTS—RACE DISCRIMINATION—PLACES OF PUBLIC ACCOMMODATION.—Section 40 of the Civil Rights Law of New York forbids discrimination on account of race or color at any "place of public accommodation, resort, or amusement." The law defines such a place as including hotels, restaurants, public conveyances, and several other places, but makes no mention of saloons. The plaintiff, a negro, was refused liquors at a saloon belonging to the defendant, the refusal being due solely to the plaintiff's color. He sued for the penalty in accordance with other provisions in the statute. *Held,* three judges dissenting, that he had no cause of action. *Gibbs v. Arras Bros.* (1918, N. Y.) 118 N. E. 857.

The plaintiff, a negro, sought to purchase tickets to the floor of a dancing pavilion maintained at a park owned and operated by the defendant electric railroad company as auxiliary to its transportation business. On account of his color he was denied admittance. The Civil Rights Law makes no express mention of dancing pavilions. *Held,* that the plaintiff was entitled to the penalty provided by the law for exclusion from a place of public accommodation, resort or amusement. *Johnson v. Auburn & Syracuse Elec. R. Co.* (1918, N. Y.) 119 N. E. 72.

These cases give a reasonable construction to a statute that exists in most of the Northern states. If the legislature means to forbid race discrimination in every sort of private business, it should do so expressly. When the statute list certain places, as hotels, bathhouses, barber shops, theaters and music halls, the courts should not extend the application of the law to other sorts of business by mere analogy or inference. Such a law deprives citizens of customary and desirable privileges. Sound policy would restrict such laws to the kinds of business long recognized as affected with public interest and as requiring governmental regulation.

CONSTITUTIONAL LAW—FEDERAL CHILD LABOR LAW INVALID.—Suit was brought by a father in his own behalf and as next friend of his two minor sons, one under the age of fourteen and the other between fourteen and six-

teen years of age, employees in a cotton mill at Charlotte, N. C., to enjoin the enforcement of the Federal Child Labor Law (39 St. at L. 675) which prohibits the shipment in interstate commerce of any product of a mill, factory, etc., in the United States, in which within thirty days before the removal of such product children under the age of fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in any week, or between seven in the evening and six in the morning. *Held,* that the Act was invalid, since "it not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority does not extend." Holmes, McKenna, Brandeis and Clarke, JJ., *dissenting. Hammer v. Dagenhart* (June 3, 1918) U. S. Sup. Ct. Oct. 1917 Term, No. 704.

Mr. Justice Day's opinion distinguishes the earlier decisions which were thought to be controlling, such as the Lottery case, the Pure Food case, the White Slave case, the Whiskey case, on the ground that "in each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results," while here "the goods shipped are of themselves harmless" and the thing intended and affected by the statute is not the regulating of transportation among the states but the standardizing of the ages at which children may be employed in manufacturing and mining within the states. One cannot read the luminous dissenting opinion of Mr. Justice Holmes without doubting the soundness of this distinction and questioning the wisdom of the majority's view that legislative motive and the indirect effects of legislation may limit the exercise by Congress of its admitted power to regulate commerce.

CONTRACTS—CONTRACT TO BEQUEATH—ACTION AT LAW FOR DAMAGES.—The plaintiff sued in the federal court for the southern district of New York the executors of L, alleging a promise by L to bequeath her $50,000 if she would perform certain services, that she had performed them, and that L had bequeathed her only $10,000. The District Judge transferred the suit to the equity side of the court on the ground that an action at law could not be sustained by New York law. The plaintiff filed a petition for mandamus to require the judge to entertain the suit at law. *Held,* that the petitioner was entitled to a writ of mandamus, since the law of New York permits an action at law for breach of a contract to leave a legacy. *Matter of Simons* (June 3, 1918) U. S. Sup. Ct. Oct. 1917 Term, No. 26 Original.

For a discussion of testamentary contracts, see (1918) 27 YALE LAW JOURNAL, 542.

CORPORATIONS—STOCK—SHARES ISSUED FOR CONSIDERATION LESS THAN PAR VALUE VOID.—The constitution of Oklahoma forbids any corporation to issue stock except "for money, labor done, or property actually received to the amount of the par value thereof, and all fictitious increase of stock . . . shall be void." A stockholder in an Oklahoma corporation filed a bill in equity asking cancellation of certain certificates of stock, alleging that they had been issued in violation of this provision. It appeared at the trial that they had been issued in good faith for only forty per cent. of the par value, which was all that could be obtained at the time. A portion of the "shares" had been transferred by the original holder to a *bona fide* purchaser for value. *Held,* that the shares issued in violation of the provision were absolutely void, even in the hands of a *bona fide* purchaser for value, and that the certificates should therefore be cancelled. *Lee v. Cameron* (1917, Okla.) 169 Pac. 17.

The court calls attention to the fact that in a large number of states the constitutional provision merely requires the stock to be issued for money or property, but does not, as in Oklahoma, require that the value received shall equal the par value of the stock. Decisions which hold that under provisions of that kind stock issued in good faith is valid, are therefore not in point in Oklahoma. The application of the rule to the *bona fide* purchaser for value may at first sight seem harsh, but the court leaves open the question of whether he would have an action for damages against the corporation or its officers, merely deciding that he is not entitled to retain his stock certificates or to have his name remain on the list of stockholders. The decision seems to carry out the obvious intention of the framers of the Oklahoma constitution.

FOREIGN CORPORATIONS—RIGHT TO SUE—INSTALLATION OF MACHINERY NOT LOCAL BUSINESS.—A Pennsylvania manufacturing corporation contracted with residents of Texas for the sale of an ice plant which was to be shipped from Pennsylvania, installed in Texas under the supervision of the seller's superintendent, and tested by him before the purchasers were obliged to accept it. The corporation, having performed its part of the contract, brought suit for the contract price, and was met by a plea that it had transacted business in Texas without having obtained a permit therefor and hence under Texas statutes was not authorized to prosecute its suit. *Held,* that the suit was maintainable, since the installation of the machinery was incidental to its sale in interstate commerce. Pitney, J., *dissenting. York Mfg. Co. v. Colley* (1918, U. S.) 38 Sup. Ct. 430.

The Texas courts had denied the plaintiff's right to maintain its suit on the strength of *Browing v. Waycross* (1914) 233 U. S. 16, 34 Sup. Ct. 578. That case held that the erection of lightning rods as incidental to an interstate sale of them was local business. Similarly, it had been held that the installation of an automatic railway signal system, including the digging of trenches for conduits for the wires, was local business. *General Ry. Sig. Co. v. Virginia* (1918, U. S.) 38 Sup. Ct. 360. The principal case distinguishes these decisions on the ground that in them the service to be performed in the foreign state was not essentially connected with and inherently related to the subject matter of the sale, while here it was. The distinction is obviously sound but not always easy of application.

MONOPOLIES—SHERMAN ACT—PRICE-FIXING FOR CERTAIN HOURS OF THE DAY.—By a rule of the Chicago Board of Trade members were forbidden to buy or offer to buy, during the hours between the closing of one day's session and the opening of the next, grain "to arrive" in Chicago, that is, grain then in transit to that city, at a price other than the closing bid of the session. Purchases of grain "to arrive" constituted a small proportion of the total transactions in grain, the greater part being "spot sales" and "future sales." *Held,* that the rule above stated was not in violation of the Sherman Anti-Trust Act. *Board of Trade v. United States* (1918, U. S.) 38 Sup. Ct. 242.

This case illustrates very well the operation of the modern and rational construction of the Sherman Act under the principles first enunciated in *Standard Oil Co. v. United States* (1911) 221 U. S. 1, 31 Sup. Ct. 502. The Board of Trade rule, during the hours of its operation, eliminated all competition between members of the Board of Trade in respect to prices for grain "to arrive"; but it affected only a small part of the grain coming to Chicago, left other important grain markets open to competition, operated only for certain hours of the day,—chiefly not regular business hours—and the price which it

fixed for those hours each day was a price established by competitive bidding on the Board. The court therefore found as the decisive fact that it "had no appreciable effect on general market prices"; and as good business reasons appeared for the adoption of the rule, which, within its narrow limits, was shown to have improved market conditions and even promoted competition in certain respects enumerated by the court, the decision sustaining its legality very properly followed. For other discussions of the "rule of reason" as applied to the construction of the Sherman Act, see COMMENTS, p. 1060, *supra*, and (1917) 27 YALE LAW JOURNAL, 139.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF CHILD—CONSTRUCTION OF STATUTE.—The New Jersey Railroad Law (3 Comp. St. 1910, p. 4245) sec. 55, declares that if "any person shall be injured by an engine or car while walking, standing or playing on any railroad," except at lawful crossings, he shall be deemed to have contributed to the injury sustained and shall not recover damages. The plaintiff, a boy less than seven years old, had been playing marbles near a railroad siding and was injured by the moving of a car while he was trying to extricate his marble from under the car. *Held*, that the plaintiff was barred from recovery. Day and Clarke, JJ., *dissenting*. *Erie R. R. Co. v. Hilt* (1918, U. S.) 38 Sup. Ct. 435.

The lower federal courts had construed this statute merely as declaratory of the common law and not as declaring with sufficient clearness an intention to charge children, however immature, with contributory negligence. *Erie R. R. Co. v. Swiderski* (1912, C. C. A. 3d) 197 Fed. 521. A state court had taken the opposite view. *Barcolini v. Atlantic City, etc. Co.* (1911, Sup. Ct.) 82 N. J. L. 107, 81 Atl. 494. The principal case follows the construction of the state court, although not the court of last resort in the state, and seems to approve such construction. It appears a rather harsh interpretation of the statute, and the arguments of the lower federal courts are thought to be more persuasive.

PUBLIC SERVICE CORPORATIONS — REGULATION OF RATES — REGULATION OF WATER COMPANY WHOSE FRANCHISE HAD EXPIRED.—After the expiration of the complainant water company's franchise the City of Denver passed an ordinance declaring the company to be a mere tenant at sufferance and fixing the rates it should thereafter charge. The company contended that these rates were confiscatory and sued to enjoin the enforcement of the ordinance. *Held*, three judges dissenting, that the company was entitled to an injunction, that the rate ordinance should be construed as granting a franchise of indefinite duration, and that in determining the reasonableness of its rates the plant was to be valued as a plant in use and the item of "going value" was to be considered. *Denver v. Denver Union Water Co.* (1918, U. S.) 38 Sup. Ct. 278.

The case is of interest both in respect to the holding that the regulatory ordinance granted a license for an indefinite term, and in respect to the reaffirmation of the rule that "going value" is an element to be considered in rate regulation. For a discussion of the latter point, see (1918) 27 YALE LAW JOURNAL, 386.

STATUTE OF FRAUDS—PAROL AGREEMENT WITH TENANT IN POSSESSION FOR FUTURE TENANCY—HOLDING OVER AFTER LANDLORD'S REPUDIATION.—A landlord agreed with the tenant in possession under a lease expiring July 31, 1915,

for a tenancy *in futuro* to continue eight months from the expiration of the original term. But thereafter, on May 11, 1915, the landlord made a lease to other parties and notified the tenant to surrender possession on August 11, 1915. In a suit by the landlord for rent from August 1st to August 11th, the defendant counterclaimed for damages caused by breach of the parol agreement to extend the lease. *Held,* that the parol agreement was within the Statute of Frauds and was not validated by the tenant's possession after the expiration of the original term because prior thereto it had been repudiated by the landlord. *Buschman Co. v. Garfield Realty Co.* (1918, Ohio) 119 N. E. 142.

When a yearly tenant holds over without any agreement he is presumed to make a contractual proposal for a yearly tenancy which the landlord accepts by acquiescing in his possession or by the receipt of rent. When a yearly tenant holds over pursuant to a prior oral agreement his continued possession acquiesced in by the landlord, is equivalent to an entry into possession under the new agreement and takes it out of the Statute of Frauds. *Bumiller v. Walker* (1917) 95 Oh. St. 344, 116 N. E. 797. But if the landlord has already repudiated the prior oral agreement, as in the principal case, then the tenant's holding over cannot be treated as a delivery of possession under the new agreement, so as to remove the bar of the Statute. The principal case is believed to be a sound decision of a point on which there is little precise authority.

STATUTE OF FRAUDS—PART PERFORMANCE—SPECIFIC PERFORMANCE OF ORAL CONTRACT RELATING TO WATER RIGHTS.—The defendant owned a water right. He orally agreed with the plaintiff that if the latter would rebuild the flume which carried the water, he would give him a right to one-fourth of the water and a right of way across the defendant's land for the flow of the water. Plaintiff rebuilt the flume in pursuance of the agreement and, on defendant's refusal to carry out the bargain, asked for specific performance. *Held,* that plaintiff was entitled to the relief asked. *Tucker v. Kirkpatrick* (1917, Or.) 169 Pac. 117.

The court took the view that there had been sufficient "part performance" to "take the oral agreement out of the statute of frauds" according to the Oregon precedents. Apparently the facts in the principal case presented a novel situation somewhat unlike those involved in previous adjudications. However, the analogy between what had been done and the situation in the case of a so-called "parol license" which "becomes irrevocable when acted upon" by the licensee seems sufficiently close to justify the present decision.

TAXATION—CORPORATION INCOME TAX—INCOME DERIVED FROM EXPORTATION.—The plaintiff corporation paid under protest a federal income tax computed upon the net income derived from its business of exporting goods to foreign countries. It contended that such tax was in violation of Art. I, sec. 9, cl. 5 of the Constitution, providing that "no tax or duty shall be laid on articles exported from any state." *Held,* that the tax was valid. *William E. Peck & Co. v. Lowe* (1918, U. S.) 38 Sup. Ct. 432.

While it has been held that the exportation must be free not only from a tax on the articles exported but also from any tax which directly burdens the exportation, the tax in question is unlike any of those previously condemned. It burdens exportation no more directly than do general taxes upon articles intended for exportation, and these are admittedly valid.

WORKMEN'S COMPENSATION ACT—FACIAL DISFIGUREMENT.—The claimant suffered a laceration of the scalp due to the catching of her hair by a revolving shaft near which she was working. This resulted in a scar across the forehead from ear to ear, and serious facial disfigurement. Her earning capacity was not shown to be impaired thereby. *Held*, that an award of $1000 by the State Industrial Commission, for the facial disfigurement alone, was valid. *Erickson v. Preuss* (1918, N. Y.) 119 N. E. 555.

The object of most compensation acts is to make compensation for loss of earning power, and such was the policy of the New York law prior to 1916, when an amendment provided for an award in case of "serious facial or head disfigurement." Concurrent awards for disfigurement and for loss of earning power are now permissible.

WORKMEN'S COMPENSATION ACT—INJURY "ARISING OUT OF" THE EMPLOYMENT—CONCUSSION FROM EXPLOSION OF ENEMY AIRCRAFT'S BOMB.—The plaintiff, a potman in the defendant's employ, being engaged in cleaning a brass door plate on the street door of the defendant's public house, was slightly injured by concussion from the explosion in another street of a bomb dropped by German air raiders. In his suit under the Workmen's Compensation Act to recover for the injury sustained, the trial court allowed a recovery. An appeal by the defendant was allowed by the Court of Appeal on the ground that, since there was no evidence of special risk in the work the plaintiff was doing, the injury did not arise out of the employment within the meaning of the act. (1917, C. A.) 144 L. T. 111. The applicant then appealed to the House of Lords. *Held*, that the injury did not arise out of the employment. *Allcock v. Rogers* (H. L.) [1918] Weekly Notes 96; 144 L. T. Jour. 401.

Compensable injuries are those (1) "arising out of" and (2) " in the course of" the employment. Earlier decisions had seemed to render almost indistinguishable these two conditions of liability. See *Thom v. Sinclair* [1917] A. C. 127, discussed in (1917) 27 YALE LAW JOURNAL, 143; *Dennis v. J. A. White & Co.* [1917] A. C. 479, discussed in (1918) 16 MICH. L. REV., 179; also (1918) 30 JURID. REV., 162. The principal case indicates that a distinction does still exist and that the accident must arise out of, as well as in the course of, employment to impose liability.